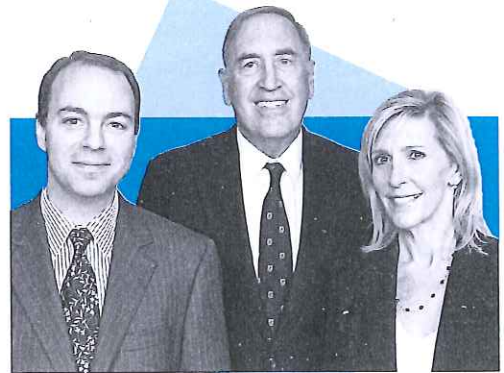


Legal Lines

Gilchrist and Rutter



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Community owner to invalidate rent control

Longtime WMA member and industry trailblazer James F. Goldstein has challenged the city of Carson's rent control ordinance, which could change rent control rules for community owners throughout California.

For many years, Goldstein has been an aggressive player in the manufactured housing industry as he forged the way through the court system and ultimately made the law on conversion/subdivision of communities through his case of *El Dorado Palm Springs, Ltd. v. City of Palm Springs*, 96 Cal. App. 4th 1153 (2002). In fact, the city of Palm Springs recently settled the damages portion of that case with Goldstein for nearly \$1 million.

Building on that success, Goldstein, along with his legal team, recently filed the most important U.S. Federal Court rent control case since the U.S. Supreme Court decided *Yee v. City of Escondido*, 503 U.S. 519 (1992), which created the current law.

If successful, this case could not only lead to the manufactured home rent control law in the city of Carson being deemed unconstitutional, but could pave the way for a federal system of minimum rent rules. This would benefit all California community owners because, as we all know, the state rules give tremendous deference to local rent control boards.

You may not know it, but you are entitled to a fair return on your investment in your community. This is true even if your city does not have a specific provision for a fair return in its ordinance. Yet seldom if ever do cities with rent control allow rents that will provide community owners with a fair return. When

community owners do apply, many cities will try to delay, manipulate, or deny the petition.

That is exactly what happened to Goldstein. Even though it is a violation of the U.S. Constitution to prohibit community owners from receiving a reasonable rate of return on their investment, the city of Carson is apparently politically committed to keeping rents unconstitutionally low.

R.S. Radford, a principal attorney at the Pacific Legal Foundation, agrees: "Sooner or later, California cities will have to learn that they can't meet their affordable housing goals by forcing a few property owners to foot the bill. That's what rent control laws like this one are all about, and that's why Carson's rent ordinance is unconstitutional."

Currently, the residents in Goldstein's community, Colony Cove Mobile Estates, pay an average of \$400 per month space rent, while market rents would be more than \$800 per month. This gap deprives the owner of more than \$30 million of property value, and causes the community to operate at a substantial loss each year.

Worse yet, this value is directly transferred to the Colony Cove residents, who on average have been receiving upon sale more than \$118,000 for their manufactured homes that have an average NADA value of \$33,000. Taking property from party A to give to party B, however, is unlawful and unconstitutional. See *Kelo v. City of New London*, 545 U.S. 469, 477 (2005).

Goldstein's case challenges the city of Carson's restrictive and confiscatory rent control scheme, which deprives the community owner of the right to obtain reasonable rents. In addition to having the city's rent control system declared unconstitutional, the suit seeks \$34 million in damages, along with a minimum rental increase of \$200 per month for each space in his community.

As a community owner, how might this action affect you?

Although you are entitled to a fair return on your investment, a fair return is elusive and community owners are not permitted to charge rents that come anywhere close to market rents.

In addition, Carson, instead of using pre-rent control net operating income to anchor their calculation, uses the community's net operating income from the last year that it granted a rent increase as a base period. This flawed methodology is further exacerbated by the fact that the city may adjust the net operating income in an arbitrarily-selected base year by less than 100 percent of the inflation rate.

Many rent control schemes explicitly depend on this nonsense calculation, which is clearly based more on *ad hoc* political considerations than on ensuring a fair rate of return.

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If your community is located in a city that irrationally, arbitrarily,

or capriciously sides with the community residents and has denied you a fair and reasonable rate of return, you too may be able to challenge the city and get the fair return to which you are entitled.

It is important to recognize, however, that you only have a short timeframe in which to challenge the city's conduct, due to statutes of limitations. But you, just like James Goldstein, have the right to a fair return on your investment and to transfer the value of land back to you, its rightful owner.

Some community owners, like Goldstein, are utilizing this right to a fair market return in conjunction with subdividing their community. Once residents realize that the owner is entitled to a fair return and they are faced with higher rents, the idea of purchasing their lots at fair market value (resident ownership) becomes more attractive. Simultane-

ously converting the community to resident ownership creates a win/win for community owners by providing fair market rents and/or a fair market value for the subdivided land.

For Goldstein, it has been determined that the city of Carson's rent control scheme has transferred over \$34 million of the community's value to its residents, which he is seeking to have returned. How much property value have you lost? ❄

Richard Close, Thomas Casparian, and Susy Forbath, together with the rest of their team, comprise the Manufactured Housing Practice Group at Gilchrist & Rutter, Santa Monica, California. (www.GilchristRutter.com). Gilchrist & Rutter represented James F. Goldstein in his challenge of Carson City's rent control ordinance.